in the defence or in the memorandum of appeal, or so far as appears, in argument.

For these reasons their Lordships will report their opinion to the Head of Malaysia that the appeal should be allowed and judgment entered for the appellant company not for $6,551.05 but for $4,528.95 and that the respondent should pay the costs of this appeal and in the courts below.

Appeal allowed.

Solicitors: *T. L. Wilson & Co.*

SINGAPORE REPORTS

BANK NEGARA INDONESIA v. PHILIP HOALIM

[C.A. (Tan Ah Tah, Winslow and Choor Singh JJ.)
November 27, 1971]

[Singapore — Civil Appeal No. 18 of 1970]

Landlord and Tenant — Recovery of possession — Whether premises "a new building" — Whether there had been a change of identity — Control of Rent Ordinance (Cap. 242, 1955 Ed.), s. 2.

Landlord and Tenant — Recovery of possession — Notice to quit — Estoppel.

The appellants/plaintiffs brought an action against the respondent/defendant claiming, *inter alia,* possession of the front room on the third floor of premises known as No. 3 Malacca Street. The said front room was let by the appellants to the respondent on a monthly tenancy.

The facts in this case were as follows:

The premises in question in 1957 were owned by one Lee Cheng Kiat. It was then an old three-storeyed building and the defendant was since 1945 a tenant of the front portion of the first floor of the said building and he was carrying on his profession as an advocate and solicitor there. In 1957 the plaintiffs negotiated to purchase the said building. In June, 1958, alterations and additions to the said building were commenced. During the alterations and additions all the tenants in the said building moved out except the defendant. A new third floor was added and when that was completed the defendant moved to the front portion of the third floor paying the same rent of $147.40 per month. The alterations and additions were completed at the end of 1958. In July, 1959, the property was conveyed to the plaintiffs by Lee Cheng Kiat. On March 29, 1961, the plaintiffs granted the defendant a lease for a term of three years from March 1, 1961, at a monthly rent of $280 per month. After the expiry of the lease in 1964 the defendant stayed on and the plaintiffs accepted the rent. On January 13, 1969, the plaintiffs gave the defendant a notice to quit expiring on February 28, 1969. The defendant failed to vacate and the plaintiffs commenced the present proceedings in March, 1969.

In his evidence the defendant said *inter alia* that the then solicitors for the plaintiffs had told him that he would have the same protection under the Control of Rent Ordinance when he moved to the third floor as he had on the front portion of the first floor and that the plaintiffs would not ask him to leave the premises for so long as he was practising his profession.

There were two issues before the court below: (1) whether the said building was "a new building" within the meaning of the Control of Rent Ordinance; and (2) whether, if the said building was held to be a new building, the plaintiffs were estopped from giving the defendant a notice to quit the premises.

The learned trial judge found that the said building was a new building within the meaning of the Control of Rent Ordinance, but dismissed the plaintiffs' claim on the ground that the plaintiffs were estopped from giving the defendant a notice to quit for so long as the defendant carried on his profession as an advocate and solicitor on the premises which had been let to him.

The plaintiffs appealed against that part of the judgment which held that they were estopped from giving the defendant a notice to quit. The defendant filed a cross-appeal against that part of the judgment in which it was held that the said building is a new building.

Held, dismissing the appeal and allowing the cross-appeal: (1) on the evidence as a whole, the said building had not changed its identity in such a manner as to be described as a new building. Therefore, the said building had not become a new building within the meaning of "premises" as defined in section 2 of the Control of Rent Ordinance;

(2) the appellants were estopped from giving the defendant a notice to quit for so long as the respondent carried on his profession on the premises.

The law relating to estoppel considered.

Cases refered to:-

(1) *Eastern Realty Co. Ltd.* v. *Chan Hua Seng* [1967] 2 M.L.J. 195 at p. 197.

(2) *Kai Nam* v. *Ma Kam Chan* [1956] A.C. 385.

(3) *Hughes* v. *Metropolitan Railway Co.* (1877) 2 App. Cas. 439.

(4) *Birmingham and District Land Co.* v. *London & North Western Railway Co.* (1888) 40 Ch. D. 268.

(5) *Central London Property Trust Ltd.* v. *High Trees House Ltd.* [1947] K.B. 130.

(6) *Emmanuel Ayodeji Ajayi* v. *Briscoe* [1964] 3 All E.R. 556.

(7) *Rogers* v. *Hyde* [1957] 2 K.B. 923.

COURT OF APPEAL.

Freddy Yin for the appellants.

Y. R. Jumabhoy for the respondent.

On June 2, 1970, the following judgment was delivered by the High Court.

Chua J.: The plaintiffs claim (a) possession of the front room on the third floor of the building known as No. 3 Malacca Street (hereinafter referred to as "the said building"), which was let out by the plaintiffs to the defendant on a monthly tenancy and (b) *mesne* profits.

The facts are shortly these. No. 3 Malacca Street in 1957 was owned by one Lee Cheng Kiat. It was then an old building consisting of a ground floor, first floor and a second floor. Since 1945 the defendant was a tenant of the front portion of the first floor in the said building and in 1957 he was paying a rent of $147.40. The defendant was carrying on his profession as an advocate and solicitor there. In 1957 the plaintiffs negotiated to purchase the said building. In June, 1958, alterations and additions to the said building were commenced. During the alterations and additions all the tenants in the said building moved out except the defendant. A new third floor was added and when that was completed the defendant moved to the front portion of the third floor paying the same rent of $147.40 per month. The alterations and additions were completed at the end of 1958. In July, 1959, the property was conveyed to the plaintiffs by Lee Cheng Kiat. In January, 1969, the plaintiffs gave the defendant a notice to quit. The defendant did not quit. On the 29th March, 1961, the plaintiffs granted the defendant a lease for a term of three years from the 1st March, 1961, at a monthly rent of $280. After the expiry of the lease in 1964 the defendant stayed on and the plaintiffs accepted the rent. On the 13th January, 1969, the plaintiffs gave the defendant a notice to quit expiring on the 28th February, 1969. The defendant failed to vacate and the plaintiffs commenced the present proceedings in March, 1969.

The plaintiffs contend that the premises occupied by the defendant is excluded from the operation of the Control of Rent Ordinance as being "a new building" within the meaning of section 2 of the Ordinance in the definition of "premises".

The first question for consideration is whether the said building is a "new building" within the meaning of the Ordinance.

The correct test to apply to decide this question is whether the old building has been subjected to such a substantial structural and/or other alterations that it becomes a new building in fact. This, as Wee Chong Jin C.J. said in *Eastern Realty Co. Ltd.* v *Chan Hua Seng*[1] is:

"always a question of degree depending on the facts of each particular case. No test of universal application can in my view be laid down."

The word "new" in the definition of "premises" in section 2 of the Ordinance is used in relation to the building and not to the materials of which it is composed. (See *Kai Nam* v. *Ma Kam Chan*,[2] a Privy Council decision).

Even though a building is erected on the same foundations and has the same floors as the former building it can nevertheless be a "new building" (see *Kai Nam* v. *Ma Kam Chan, supra*).

As I have already said before the alterations and additions the said building was an old three-storeyed building. There was a balcony on the first floor. The rear portion of the ground floor was used as a godown. The first and second floors were sub-divided into offices of various sizes with wooden partitions. The floor of the ground floor was concrete. The rear portion of the floor of the first floor was of timber and the front was of concrete. The floor of the second floor was of concrete. The staircase, leading to the first and second floors, was of timber and was in the front portion of the building. The lift well was of asbestos with a frame work.

Now what were the alterations and additions done to the old building?

First of all two new floors were added — a mezzanine floor, between the ground and first floors, and a third floor. A new roof was constructed.

The following works were done on the ground floor. The whole of the floor was broken up and a new concrete floor laid. A strong room for the use of the plaintiffs was constructed. A new lift well of brick was constructed, but the old lift, after reconditioning, is still in use. The wooden staircase was removed and two new concrete staircases were constructed, one at the front and one at the back of the building. The staircase at the front is not in its original position. An airwell was constructed.

The following works were done on the first floor. The wooden partitions were completely knocked down and removed. Three inches of concrete were added on to the existing concrete floor in the front portion. The rear portion of the floor which was of timber was demolished and a new concrete floor was laid.

The wooden partitions in the second floor were completely knocked down and removed. Three inches of concrete were added on to the existing concrete floor.

The existing walls and columns were strengthened for the mezzanine floor and the third floor. A new wall was added on to the existing wall to support the third floor.

The whole of the front and the rear of the old building were taken down and a new front and rear constructed. The balcony on the first floor was done away with. The front elevation shows that the whole is new, similarly the rear elevation.

The contract for the alterations and additions was signed for $157,900 but the plaintiffs say that eventually they spent $306,656.89 on the building out of which (a) $73,000 was for air-conditioning, (b) $22,200 for re-rendering all floors and laying new mosaic tiles on the ground floor and asphalt tiles on the first and second floors, (c) $11,250.00 for new ceiling in celotex for all floors. I have no reason to doubt that the plaintiffs spent $306,656.89 on the alterations and additions.

The nature and extent of the structural alterations and other works carried out to the old building went far beyond repairs as contended by the defendant. In my view there has been such a fundamental change to the old building so that it can no longer be said to exist and that a new building has replaced it.

My finding that the said building is a new building does not resolve this case. The defendant says that even if it is a new building the plaintiffs are estopped from claiming possession of the premises which he occupies by reason of an agreement oral and partly in writing in 1958 between Lee Cheng Kiat, the plaintiffs' nominee and/or predecessor in title and himself.

The defendant's evidence is this. Prior to 1959 he was paying the rent to Messrs. Allen & Gledhill solicitors of the landlord. In 1958 the landlord asked him to move out but he refused. Sometime in October, 1958, the roof of the building was taken off and as a result whenever it rained his office was flooded and he could not do any work and he had to protect his books. On the 4th October, 1958, his solicitors wrote to Messrs. Allen & Gledhill complaining of the nuisance and threatening to take out a writ for an injunction and damages unless the nuisance was abated immediately (Ex. D1). Brash and Atkinson of Messrs. Allen & Gledhill came to see him several times and they asked him to move to the back portion of the first floor so that repairs could be carried out to the front portion. They told him that the plaintiffs needed the building as quickly as possible and repairs had to be rushed. They asked him to move to the back of the first floor first and when the third floor was ready he could move to the front portion of that floor. They told him that he would have the same protection under the Control of Rent Ordinance there on the third floor as he had on the front portion of the first floor and that the plaintiffs would not ask him to leave the premises for as long as he was practising his profession. Those assurances were repeated by Brash subsequently and on those assurances he agreed to move out of the front portion of the first floor so that repairs could be carried out there. He moved to the back portion of the first floor where he remained for three or four months. When the front portion of the third floor was ready to his satisfaction and when the lift to the third floor was working he moved there. The removal of his office on both occasions were carried out by the landlord's contractor and at the landlord's expense. His office on the third floor is approximately the same size as the area occupied by him on the first floor.

After the repairs were completed the plaintiffs occupied the ground and first floors. The second floor was occupied by several companies connected with Khoo Teck Puat. By then Brash had left Messrs. Allen & Gledhill and was practising on his own and he occupied a room on the second floor.

On the 12th January, 1961, he received a notice to quit. With the notice was a letter from the plaintiffs' solicitors informing him that if he wished to continue in occupation the plaintiffs were willing to grant a new tenancy at $517 per month. He went to see the plaintiffs' solicitors. Negotiations took place and he was asked to pay a rent of $280 per month and sign a lease for three years to which he agreed. After the expiry of the lease he received several notices to quit which he ignored. He continued to pay the rent. Finally he received the notice to quit on 13th January 1969, and later the plaintiffs commenced the present action.

He does not know Lee Cheng Kiat, he has never spoken to him. Whenever Brash came to see him Brash never mentioned Lee Cheng Kiat but said that the plaintiffs wanted the building to be completed as soon as possible. He took it that Brash was acting for the plaintiffs as well.

To get a full picture of the situation in 1957 and 1958 it is necessary to set out certain parts of the evidence of Teo Hur Eng the business adviser of the plaintiff bank. He said:

"The Bank discussed the purchase in 1957 with Tan Sri Khoo Teck Puat. To all intents and purposes we regarded Khoo Teck Puat as the owner of the building and all negotiations were conducted with Khoo Teck Puat. The purchase sum was paid direct to Khoo Teck Puat.

....

The intention of the Bank was to remove from 253 South Bridge Road our old premises to No. 3 Malacca Street.

....

Before moving into No. 3 Malacca Street it was our intention to rebuild the whole of No. 3 as it was an old building.

....

The Bank carried out a discussion about the renovations with Khoo Teck Puat. All payments for the renovations were made to Khoo Teck Puat.

....

Khoo Teck Puat was the person who arranged for the renovations. He told the Bank what the cost was and the Bank paid him.

I visited the premises during the course of renovation."

It appears that although the property was in the name of Lee Cheng Kiat the true owner was Khoo Teck Puat to whom the plaintiffs paid the purchase price of $550,000 on the 1st February, 1958, and the cost of renovation amounting to $306,656.89 ($200,000

on 20th June, 1958, $74,757.58 on 15th June, 1959, $38,900 on 18th June, 1959). Lee Cheng Kiat was only the front man for Khoo Teck Puat.

It is clear that Khoo Teck Puat did the renovations of the said building on behalf of the plaintiffs and that he was given *carte blanche* and that he was the agent of the plaintiffs.

There is no doubt that the defendant knew, at the time he was asked to quit the premises together with the other tenants, that the plaintiffs had bought the said building and wanted to renovate it and use part of it for themselves. All the negotiations with the defendant to move out of the front portion of the first floor and eventually to occupy the front part of the third floor were conducted by Brash and it was reasonable for the defendant to infer that Brash was then acting both for the landlord and the plaintiffs.

Now the question arises as to whether the assurances which the defendant said Brash gave to him were in fact made. It is not in dispute that all the other tenants in the said building had moved out before the renovations commenced, only the defendant refused to go. With the result that works on the building had to be carried out around the defendant and at one stage had to stop as nothing could be done to the front portion of the first floor so long as the defendant was there. The plaintiffs no doubt were anxious that the renovations should be done as quickly as possible so that they could move into the ground and first floors. It was in those circumstances that Brash came to see the defendant several times in order to persuade the defendant to move out. The defendant was a protected tenant. Would he have moved out and give up his valuable rights without the assurances which he said was given him? It is highly unlikely. I accept the defendant's evidence that those assurances were given.

Messrs. Allen & Gledhill were at that time acting for the nominal owner of the property but I have no doubt that it was Khoo Teck Puat who gave them the instructions. Khoo Teck Puat, as I have said, as far as the renovation of the building was concerned, was the agent of the plaintiffs. I find that in fact those assurances were given by Brash on behalf of Khoo Teck Puat the plaintiffs' agent. I think the plaintiffs were aware of the assurances given to the defendant.

The defendant is relying as his defence on a principle which is known as promissory estoppel. This doctrine is derived from a principle of equity and was enunciated in 1877 in the case of *Hughes* v. *Metropolitan Railway Co.*[3] That was a decision of the English House of Lords on an application for a stay of execution on an order for ejectment made between lessor and lessee. There had been six months' notice to repair, which would have entitled the lessor, on non-compliance, to an ejectment order; but negotiations between the parties had supervened upon the notice and it was contended that these precluded the lessor from maintaining that the notice continued to run effectively during their currency. Lord Cairns L.C. expressed the principle as follows (at p. 448):

> "It is the first principle upon which all courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results — certain penalties or legal forfeiture — afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties."

This principle was interpreted in the English Court of Appeal case of *Birmingham and District Land Co.* v. *London & North Western Railway Co.*[4] Bowen L.J. said (at p. 286):

> "Now, it was suggested by Mr. Clare that that proposition (enunciated in *Hughes'* case) only applied to cases where penal rights in the nature of forfeiture, or analogous to those of forfeiture were sought to be enforced. I entirely fail to see any such possible distinction. The principle has nothing to do with forfeiture. It is a principle which lies outside forfeiture, and everything connected with forfeiture, as will be seen in a moment by reflection. It was applied in *Hughes* v. *Metropolitan Railway Company*[3] in a case in which equity could not relieve against forfeiture upon the mere ground that it was a forfeiture, but could interfere only because there had been something in the nature of acquiescence, or negotiations between the parties, which made it inequitable to allow the forfeiture to be enforced. The truth is that the proposition is wider than cases of forfeiture. It seems to me to amount to this, that if persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe that such rights will either not be enforced or will be kept in suspense or abeyance for some particular time, those persons will not be allowed by a Court of Equity to enforce the rights until such time has elapsed, without at all events placing the parties in the same position as they were before."

In *Central London Property Trust Ltd.* v. *High Trees House, Ltd.*[5] the defendant lessee alleged that the lessor had agreed (but without consideration) to accept rent at a reduced rate and attempted to set up an estoppel by way of defence to a claim for arrears of rental calculated at a full rate. Denning J. (as he then was) said (at p. 134):

> "But what is the position in view of developments in the law in recent years? The law has not been standing still since *Jorden* v. *Money*. There has been a series of decisions over the last fifty years which, although they are said to be cases of estoppel are not really such. They are cases in which a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made; and which was in fact so acted on. In such cases the courts have said that the promise must be honoured. The cases to which I particularly desire to refer are: *Fenner* v. *Blake, In re Wickham, Re William Porter & Co., Ltd.* and *Buttery* v. *Pickard*. As I have said they are not cases of estoppel in the strict sense. They are really promises — promises intended to be binding, intended to be acted on, and in fact acted on. *Jorden* v. *Money* can be distinguished, because there the promissor made it clear that she did not intend to be legally bound, whereas in the cases to which I refer the proper inference was that the promisor did intend to be bound. In each case the court held the promise to be binding on the party making it, even though under the old common law it might be difficult to find any consideration for it. The courts have not gone so far as to give a cause of action in damages for the breach of such a promise, but they have refused to allow the party making it to act inconsistently with it. It is in that sense, and that sense only, that such a promise gives rise to an estoppel. The decisions are a natural result of the fusion of law and equity: for the cases of *Hughes* v. *Metropolitan Ry. Co., Birmingham and District Land Co.* v. *London & North Western Ry. Co.* and *Salisbury*

(Marquess) v. *Gilmore,* afford a sufficient basis for saying that a party would not be allowed in equity to go back on such a promise. In my opinion, the time has now come for the validity of such a promise to be recognized. The logical consequence, no doubt is that a promise to accept a smaller sum in discharge of a larger sum, if acted upon, is binding notwithstanding the absence of consideration; and if the fusion of law and equity leads to this result, so much the better."

The principle defined by Bowen L.J. in *Birmingham and District Land Co.* v. *London & North Western Railway Co.*[4] was considered in the Privy Council case of *Emmanuel Ayodeji Ajayi* v. *Briscoe.*[6] Lord Hodson, delivering the judgment of the Board, said (at p. 559):

"The principle, which has been described as *quasi* estoppel and perhaps more aptly as promissory estoppel, is that when one party to a contract in the absence of fresh consideration agrees not to enforce his rights an equity will be raised in favour of the other party. This equity is, however, subject to the qualification (a) that the other party has altered his position, (b) that the promissor can resile from his promise on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position, (c) the promisee only becomes final and irrevocable if the promisee cannot resume his position."

It is contended on behalf of the plaintiffs that the defendant is an unprotected tenant of the premises he is now occupying. It is submitted that on the authority of *Rogers* v. *Hyde*[7] parties are unable to bring a tenancy within the protection of the Control of Rent Ordinance merely by a contractual provision to that effect and they could not of their own volition oust or reduce the jurisdiction of the court to grant an order for possession. It is further submitted that the defendant is precluded by section 4 of the Registration of Deeds Ordinance (Cap. 255) from giving evidence that there was an oral agreement granting him a lease in perpetuity of the premises.

It is not the contention of the defendant that the effect of the assurances given to him was to give him a protected tenancy of the premises he is now occupying. Nor did he contend that the plaintiffs have granted him a lease in perpetuity. The defendant's case is simply that the plaintiffs are estopped from serving a notice to quit on him in view of the assurances that were given to him. I do not, therefore, find it necessary to say anything more about these points raised by the plaintiffs.

It is also submitted by the plaintiffs that estoppels bind only the parties and not a stranger. This is of course correct but the plaintiffs here are not strangers, they are privies in title; they derived their title from the person who made the assurances to the defendant and they are bound by the same assurances and consequent estoppel as that which binds the person who made the assurances.

In my view this is a case of promissory estoppel. It would be contrary to conscience to grant the plaintiffs possession which they now seek. The plaintiffs are estopped from giving the defendant notice to quit for as long as the defendant carries on his profession there.

For these reasons I dismiss the plaintiffs' claim with costs.

The plaintiffs appealed against that part of the judgment which held that they were estopped from giving the defendant a notice to quit. The defendant filed a cross-appeal against that part of the judgment in which it was held that the said building is a new building. The following reserved judgement was delivered by the Court of Appeal:

Tan Ah Tah J. (delivering the judgment of the court): In this case the plaintiffs brought an action in the High Court against the defendant claiming, *inter alia,* possession of the front room on the third floor of the building known as No. 3 Malacca Street (hereinafter referred to as "the said building") which said front room was let by the plaintiffs to the defendant on a monthly tenancy. The learned trial judge by his judgment found that the said building was a new building within the meaning of the Control of Rent Ordinance but dismissed the plaintiffs' claim on the ground that the plaintiffs were estopped from giving the defendant a notice to quit for as long as the defendant carries on his profession as an advocate and solicitor on the premises which had been let to him. The plaintiffs now appeal against that part of the judgment which holds that they are estopped from giving the defendant a notice to quit. The defendant on the other hand has filed a cross-appeal against that part of the judgment in which it is held that the said building is a new building.

In 1957 the said building was owned by one Lee Cheng Kiat. At that time it comprised a ground floor, a first floor and a second floor. In 1945 the defendant had become a tenant of the front portion of the first floor in the said building and was carrying on his profession as an advocate and solicitor there. In 1957 the defendant was paying a rent of $147.40 *per mensem* for the premises rented by him. In the same year 1957 the plaintiffs entered into negotiations to purchase the said building. In June 1958, alterations and additions to the said building commenced to be made. During this work all the tenants in the said building moved out except the defendant. A new third floor was added to the said building and when that was completed the defendant went into occupation of the front portion of the third floor paying the same rent of $147.40 *per mensem.* The alterations and additions were completed at the end of 1958. In July 1959, the property was conveyed by Lee Cheng Kiat to the plaintiffs. In January 1961, the plaintiffs gave the defendant one month's notice to quit the premises. The defendant did not comply with this notice to quit but eventually, after certain negotiations had been entered into, the plaintiffs on the 29th March 1961 granted the defendant a lease for a term of three years commencing on the 1st March 1961 at a monthly rent of $280. After the expiry of the lease in 1964 the defendant remained in occupation of the premises and the plaintiffs accepted the rent. On the 13th January 1969, the plaintiffs gave the defendant a notice to quit expiring on the 28th February 1969. The defendant refused to comply with this notice and the plaintiffs commenced this action in March 1969.

The case was argued in the court below on the basis that there were two issues to be tried. The

first issue was whether the said building was a new building within the meaning of the Control of Rent Ordinance. The second issue was whether, if the said building was held to be a new building, the plaintiffs were estopped from giving the defendant a notice to quit the premises.

It is convenient at this stage to quote the following passages from the judgment of the learned trial judge in which he deals with the first issue:—

"As I have already said before the alterations and additions the said building was an old three-storeyed building. There was a balcony on the first floor. The rear portion of the ground floor was used as a godown. The first and second floors were sub-divided into offices of various sizes with wooden partitions. The floor of the ground floor was concrete. The rear portion of the floor of the first floor was of timber and the front was of concrete. The floor of the second floor was of concrete. The staircase, leading to the first and second floors, was of timber and was in the front portion of the building. The lift well was of asbestos with a frame work.

Now what were the alterations and additions done to the old building?

First of all two new floors were added — a mezzanine floor, between the ground and first floors, and a third floor. A new roof was constructed.

The following works were done on the ground floor. The whole of the floor was broken up and a new concrete floor laid. A strong room for the use of the plaintiffs was constructed. A new lift well of brick was constructed, but the old lift, after reconditioning, is still in use. The wooden staircase was removed and two new concrete staircases were constructed, one at the front and one at the back of the building. The staircase at the front is not in its original position. An airwell was constructed.

The following works were done on the first floor. The wooden partitions were completely knocked down and removed. Three inches of concrete were added on to the existing concrete floor in the front portion. The rear portion of the floor which was of timber was demolished and a new concrete floor was laid.

The wooden partitions in the second floor were completely knocked down and removed. Three inches of concrete were added on to the existing concrete floor.

The existing walls and columns were strengthened for the mezzanine floor and the third floor. A new wall was added on to the existing wall to support the third floor.

The whole of the front and the rear of the old building were taken down and a new front and rear constructed. The balcony on the first floor was done away with. The front elevation shows that the whole is new, similarly the rear elevation.

The contract for the alterations and additions was signed for $157,900 but the plaintiffs say that eventually they spent $306,656.89 on the building out of which (a) $73,000 was for air-conditioning, (b) $22,200 for re-rendering all floors and laying new mosaic tiles on the ground floor and asphalt tiles on the first and second floors, (c) $11,250.00 for new ceiling in celotex for all floors. I have no reason to doubt that the plaintiffs spent $306,656.89 on the alterations and additions.

The nature and extent of the structural alterations and other works carried out to the old building went far beyond repairs as contended by the defendant. In my view there has been such a fundamental change to the old building so that it can no longer be said to exist and that a new building has replaced it."

As was stated by Wee Chong Jin C.J. in *Eastern Realty Co. Ltd.* v. *Chan Hua Seng*[1] the question whether a building because of substantial structural and/or other alterations becomes a new building is always a question of degree depending on the facts of each particular case. No test of universal application can be laid down.

It is relevant to note that immediately before the commencement of the work involving alterations and additions to the said building, all the three floors were occupied or used by tenants. All these tenants, with the exception of the defendant, moved out of the said building merely in order to enable the work to proceed. The said building was still a substantial building which was in no danger of collapsing; it could still be used for the purpose of carrying on the various professional or commercial activities of the tenants.

The learned trial judge has stated that he had no reason to doubt that the plaintiffs spent the sum of $306,656.89 on the alterations and additions. However, out of this sum, $73,000 was for air-conditioning, $22,200 for re-rendering all floors and laying new mosaic tiles on the ground floor and asphalt tiles on the first and second floors and $11,250 for a new ceiling in celotex for all the floors. The plaintiffs therefore spent only $200,206.89 on what can properly be called alterations and additions in the context of this case.

It is true that two new floors were added to the said building — a mezzanine floor between the ground and first floors, and a third floor. The mezzanine floor was about half the length of the other floors. We have taken into account these additions and others mentioned by the learned trial judge, but on a careful consideration of the whole of the evidence relating to the work done, we have come to the conclusion that the said building has not changed its identity in such a manner as to be described as a new building. So far as this point is concerned, no question as to the veracity and demeanour of witnesses arises. We accordingly find that the said building has not become a new building within the meaning of the definition of the word "premises" in section 2 of the Control of Rent Ordinance.

In the event of another view being taken of the matter it is desirable for us to express our opinion on the second issue. We accept the finding of the learned trial judge that Mr. Brash, in persuading the defendant to move out of the front portion of the first floor which he originally occupied and to occupy the rear portion of the first floor while the work was going on, assured the defendant that he would not be asked to leave the premises so long as he was practising his profession. We also agree with the opinion expressed by the learned trial judge that the plaintiffs are estopped from giving the defendant a notice to quit for as long as the defendant carries on his profession on the premises.

Counsel for the plaintiffs has submitted that by becoming a party to the lease dated the 29th March 1961 the defendant waived his right to rely on the defence of estoppel. However, counsel for the plaintiffs was unable to show that the question of waiver was raised in the pleadings. The fact that only two issues were argued in the court below makes it obvious that the point regarding waiver was never taken. Indeed, according to the record, counsel for the plain-

tiffs in opening his case stated that there was only one issue in the case and that is whether the said building is a new building. The point regarding waiver is therefore not open to the plaintiffs in this court.

We accordingly allow the defendant's cross-appeal with costs and dismiss the plaintiffs' appeal with costs.

Appeal dismissed.

Cross-appeal allowed.

Solicitors: *Tan, Rajah & Cheah; Mallal & Namazie.*

RE TAN KIONG HWA

[O.C.J. (Chua J.) March 15, 1972]

[Singapore — Originating Summons No. 304 of 1971]

Lands Laws — Caveat — Lodgment — Priority in the event of conflicting interests — Withdrawal of — Whether takes effect from lodgment or registration of notice — Land Titles (Strata) Act, 1967 — Land Titles Ordinance, 1956, ss. 37(1), 100, 101(1) 103, 104(1), 106 & 107(1).

By an agreement dated May 10, 1969 the Malaya Union Co. Ltd., the developers, sold flat No. 4-A Ford Mansions, Singapore, to the applicant Tan Kiong Hwa for the price of $36,900. By a subsequent agreement dated February 18, 1970 the developers sold the same flat (then re-numbered 7-A) to one Ali Sjarif for the price of $54,000.00. By a further agreement dated June 29, 1971 the said Ali Sjarif sold the same flat to one Chung Pek Cheng at the price of $67,000. The whole of the block of flats known as Ford Mansions of which No. 7-A Ford Mansions forms part was at all material times mortgaged by Malaya Union Co. Ltd. to the Overseas Union Bank Ltd., and was in fact surrendered to the Government of Singapore for the issue of Subsidiary Strata Certificates of Title in favour of the said bank.

The developers notwithstanding repeated requests of the applicant neglected and refused to take any steps towards completion of the agreement dated May 10, 1969 and on September 24, 1971 the applicant commenced proceedings against the Malaya Union Co. Ltd. for specific performance and damages in Suit No. 1502 of 1971.

Meanwhile on October 1, 1971, that is, about 8 months after the Subsidiary Strata Certificate of Title had been issued in respect of the said flat, Chung Pek Cheng lodged a caveat in the Registry of Titles claiming an interest as purchaser of the said flat under the agreement dated June 29, 1971. On October 5, 1971 the applicant lodged a caveat against the said flat claiming an interest under the agreement dated May 10, 1969. On October 16, 1971 Chung Pek Cheng lodged for registration the following instruments:

(a) a withdrawal of caveat in respect of the caveat lodged by him earlier,

(b) a transfer in his favour executed by both the Overseas Union Bank Ltd. and Malaya Union Co. Ltd.,

(a) a mortgage by him in favour of Chung Khiaw Finance Ltd.

The Registrar of Titles on October 21, 1971 notified the applicant that he intended to register the transfer and the mortgage at the expiration of 21 days unless a court order to the contrary was served on him. The applicant then applied to the court for his caveat to be extended until the trial in Suit No. 1502 of 1971 and the suspension of the registration of the transfer and mortgage lodged by Chung Pek Cheng after the outcome of the said trial.

Held, dismissing the application: (1) the court was concerned with the priority on the register between conflicting interests of the applicant and Chung Pek Cheng. In this case there was no dispute that Chung Pek Cheng was the one first filing a caveat and therefore he was entitled to priority in the absence of fraud;

(2) the withdrawal of caveat lodged by Chung Pek Cheng did not take away the priority that he had gained earlier as the withdrawal of caveat was not accepted for registration by the Registrar of Titles. A withdrawal of caveat can only take effect on registration and not from the time and date of lodgment.

Butler v. *Fairclough* cited with approval.

Cases referred to:-

(1) *Abigail* v. *Lapin* [1934] A.C. 491, 500.

(2) *Butler* v. *Fairclough* (1917) 23 C.L.R. 78.

SUMMONS.

K. E. Hilborne for the applicant.

Tan Ching Tiong for the respondent.

Cur. Adv. Vult.

Chua J.: The following facts are not in dispute by the parties in this matter. By an agreement for sale dated the 10th May, 1969, the Malaya Union Co. Ltd. agreed to sell to the applicant a flat known as No. 4-A Ford Mansion, Singapore for $36,900. The flat forms part of a block of flats being erected by Malaya Union Co. Ltd. on Lot 187-150 of mukim IV and is now known as flat No. 7-A. The applicant paid a deposit of $3,690 and under the agreement for sale the applicant opted to take a mortgage loan of $17,000 from a finance company procured by the Malaya Union Co. Ltd.

By an agreement for sale dated the 18th February, 1970, the Malaya Union Co. Ltd. agreed to sell to Ali Sjarif flat No. 7-A Ford Mansion for $54,000.

By letter dated the 16th March, 1970, the solicitors for the Malaya Union Co. Ltd. confirmed that the applicant could obtain the keys to the flat No. 7-A and take possession of the said flat provided the applicant was willing to bear the property tax, maintenance charges and interest on the unexecuted mortgage loan of $17,000, to which the applicant agreed. In pursuance of the agreement for sale the applicant has paid by instalments a total sum of $20,500.

The title deeds relating to Ford Mansion were surrendered to the Government of Singapore under the provisions of the Land Titles (Strata) Act, 1967, so that the land might be brought under the provisions of the Land Titles Ordinance, 1956 and for the issue of a subsidiary strata certificate of title. The property in question is now comprised in Lot 2989-B-4 of Mukim IV shown on Strata Titles Plan registered No. 078 (Subsidiary Strata Certificate of Title volume 6 folio 14).

By an agreement of sale dated 29th June, 1971, Ali Sjarif agreed to sell flat No. 7-A Ford Mansions to Chung Pek Cheng for $67,000. At that time there was no other interest affecting the said land and premises other than the interest of Overseas Union Bank Ltd., who were the mortgagees thereof duly registered in the Land Titles Registry as the registered proprietor of the said land and premises.

The Malaya Union Co. Ltd. notwithstanding repeated requests by the applicant have neglected and refused to take any step towards the completion of the agreement for sale and on the 24th September,